

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1885 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NATWARLAL PITAMBARDAS PATEL

Versus

DEPUTY SECRETARY

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Appearance:

MR KS JHAVERI for Petitioner  
Mr.MR Anand G.P.with Mr.A.J.Desai A.G.P.  
for Respondent No.1 and 2.  
M/S PM Thakkar Sr.Counsel with Mr.Navin Pahwa  
for Respondent No.3.

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 13/02/97

ORAL JUDGEMENT

Rule.

I have heard both the sides at length on merits.

The pleadings are also complete, and, therefore, in the circumstances, I proceed to dispose of this petition finally by issuing rule.

2. Shri Natwarlal Pitambardas Patel has filed the present petition under Article 226 and 227 of the Constitution of India to challenge the order passed by the respondent No.1 dated 29-2-96 in Revision Application preferred by him against the order of respondent No.2 namely the Director of Agricultural Marketing And Rural Finance, Gujarat State on 25th January, 1996.

3. The petitioner is Chairman of Mehsana Agricultural Produce Market Committee after he was elected as a member from Mehsana Taluka Kharid Vechan Sangh Ltd. in the general election held in the month of January, 1994. Petitioner was elected from co-operative marketing constituency. The respondent No.2 issued a notice on 23-11-95 under Section 14 Gujarat Agricultural Produce Market Act, 1963 stating therein that Mehsana Taluka Kharid Vechan Sangh Ltd. had not taken licence for the year 1995-96, and, therefore, he was called upon to show cause as to why he should not be held disqualified under Section 14 (1) (i) of the Gujarat Agricultural Produce Market Act, 1963. In the said notice issued to the petitioner there is reference of letter received by the respondent No.2 from the District Registrar, Co-operative Societies, dtd. 9-11-95. It is the claim of the petitioner that he had asked for the copy of the said letter. The same was not supplied to him, and, thereafter, he had shown cause for not taking action by filing his reply dtd. 4-12-95. It is the allegation of the petitioner in this petition as well as in the reply filed to the said show cause notice that the action initiated against him was issued at the instance of one Atmaram Patel and that the action was malafidely taken against him though in fact there was no foundation for taking any action against him.

4. It is further claim of the petitioner that when the show cause notice was issued to him, it was claimed that he was to be disqualified because the failure of his society to obtain a licence, he was liable to be removed. But when the respondent No.2 passed the order, he was not removed on that ground, but he was removed on the ground that he ceased to be a member of electorate as the State Government had removed the Board of Directors of original society namely Mehsana Taluka Sahakari Kharid Vechan Sangh Ltd. Therefore, it is his contention that the action taken against him on the ground which was not mentioned in the show cause notice and consequently he

had lost the opportunity to meet the said ground, it is his submission that the said action taken against him was a ground which was not mentioned in the show cause notice because respondent No.2 was acting at the behest of his political rival Atmaram Patel who was interested to see that he is removed in any way from the Chairmanship.

5. It is the claim of the petitioner that when he had preferred Revision before the respondent No.1, the respondent No.1 also did not apply his mind to the facts and circumstances on record and he also recorded a finding by reversing the finding of respondent No.2 and by holding that he was to be removed on the ground that his original society namely Mehsana Taluka Sahakari Kharid Vechan Sangh had not obtained the necessary licence. That conduct of respondent No.1 clearly also shows that he was acting at the behest of Atmaram Patel who happen to be one of the sitting Minister of the then Government. According to the petitioner there is a misinterpretation and misreading of provisions of Section 11 as well as Section 14 of the Gujarat Agricultural Produce Market Act, 1963. He therefore, has come before this court to quash and set aside the order passed by the respondent No.2 which has been confirmed by respondent No.1 by allowing his petition.

6. There is no dispute of the fact that petitioner is a member of Mehsana Taluka Co-operative Purchase and Sale Union, Mehsana. It is also an admitted fact that he was also the member of the Board of the Directors of the said Mehsana Taluka Co-operative Purchase and Sale Union, Mehsana. It is not also in dispute that in the general election held in the month of January, 1994, the petitioner is elected as a member of Mehsana Agricultural Produce Market Committee from co-operative marketing societies constituency. It is also an admitted fact that the Board of Directors of Mehsana Taluka Co-operative Purchase and Sale Union, Mehsana, has been abolished by the State Government by exercising the powers under the Gujarat Co-operative Societies Act and an administrator is appointed in the place of the same. Bearing these admitted fact in mind, the controversy between the parties will have to be considered.

7. There is no dispute of the fact that in the notice issued on 23-11-95, the only ground taken for taking action against the petitioner was that as his Mehsana Taluka Co-operative Purchase and Sale Union had not taken licence of the market committee, Mehsana for the year 1995-96, he had disqualified himself under Section 14 (1) (i) of the Gujarat Agricultural Produce

Market Act, 1963 and was thereby liable to be removed as the member of the Agricultural Produce Market Committee. When the petitioner was served with the said show cause notice on only one ground of his co-operative society had failed to obtain a licence for the year 1995-96, any action against him on any other ground other than the ground mentioned in the said notice is not justified and will not be legal and valid. It is urged before me by the learned advocate for the respondent that neither section 14 nor any other section of the Gujarat Agricultural Produce Market Act, 1963 specifically lays down that before taking action under Section 14 any show cause notice is to be issued. In order to consider this contention, it is necessary to see the provision of Section 14 of the said Act, 1963. The provision of Section 14 are running as under :

14 (1) An elected or nominated member or  
nominated member shall cease to hold  
office as such member if-

(i) he ceased to be a member of the  
electorate by which he was elected ; or

(ii) he being a member of the class  
specified in clause (i) of subsection (1)  
of section 11 is granted a general  
licence under this Act ; or

(iii) he being a member nominated by a  
local authority, ceases to be a  
councillor, or as the case may be, a  
member of the local authority or is  
granted a general licence under this Act.

(2) The question whether any member ceases to  
hold office under sub section (1) shall  
be determined by the Director.

If the provisions of sub section 2 of Section 14 are considered, then it would be quite clear that the said sub section 2 provides that respondent No.2 has to determine the question whether any member cease to hold any office or not. When he has to determine the same, then naturally before determination of the said question, he will have to give opportunity to the person of being heard before recording the finding against him that he ceased to hold the office. The very fact that in the instant case also the show cause notice was issued by the respondent No.2, the contention raised on behalf of the respondent that there was necessity to issue a show cause notice could not be accepted particularly in view of the

provisions of sub section 2 of Section 14 of the said Act. Therefore, the action taken by both the respondents Nos. 1 and 2 against the present petitioner on a ground which is not mentioned in the show cause notice of 23-11-95 is obviously illegal and improper and the same deserves to be quashed and set aside.

8. Admittedly the action taken against the present petitioner is under Section 14 (1) (i) of the said Act of 1963. Now in order to consider the said action, it is necessary to make reference to the provisions of Section 11 of the said Act of 1963 as well as the definition of electorate given in the Gujarat Agricultural Produce Rules 1965. The definition of electorate given under Section 2 (5) of Gujarat Agricultural Produce Market Rules, 1965 is running as under :

"Electorate " means a group of voters included in the list of voters prepared and maintained for the purposes of clause (i) of sub-section (1) of Section 11, clause (ii) of that sub-section or, as the case may be, clause (iii) of that sub-section;

Section 11 (1) is relevant for the determination of the controversy before me and that Section 11 (1) of the said Act of 1963 is running as under :

11(1) Every market committee shall consists of following members namely ;

- i) .....
- ii).....
- iii) two representatives of the co-operative marketing societies situate in the market area and holding general licences, to be elected from amongst the members ( other than normal) associate or sympathiser member ) of such societies by the members of the managing committees of such societies :

Provided that where the number of co-operative marketing societies so situate does not exceed two, only one representative shall be so elected ;

Now if the provisions of sub section 1 of Section 11 is considered, then it would be quite clear that there are 3 categories of electorate. Admittedly the present petitioner is coming under 3rd category. The 3rd category consists of two representatives of the

co-operative marketing societies situate in the market area and holding general licences, to be elected from amongst the members ( other than normal associate or sympathiser members) of such societies by the members of the managing committees of such societies. Thus, the voters are the Members of the managing committees of such societies :

Therefore, the two representatives to be elected under Section 11(1) (iii) are to be elected by the electorate consisting of managing committees of the societies working in the market area. The provisions of Section 11 (1) (iii) does not lay down that those two representatives to be elected must necessarily to be the members of the managing committee of the society. They are to be only the members of the society working in the market area. The present petitioner is one of those two representatives elected under the said Section 11 (1) (iii). No doubt at the time of his election he happen to be the member of the managing committee i.e. Board of Directors of Mehsana Taluka Co-operative Purchase and Sale Union. But merely because he happen to be the member of the managing committee, it could not be said that he was entitled to contest the election and also so elected only because he was the member of the managing committee. What is required by the provisions of Section 11 (1) (iii) is that the persons who are to be elected must be member of co-operative society within the area of market committee and they are to be only elected by the voters who must be the members of the managing committee and all the co-operative marketing societies within the market area. Merely because the voters who are to be the members of the managing committee of the co-operative societies within the market area, it could not be said that those two representatives elected by them must be also the members of the managing committee of any co-operative marketing society. Therefore, in the circumstances, even after the election in question, the managing committee of the co-operative marketing society of which the present petitioner is a member happen to be abolished by the State Government, it could not be said that the petitioner has disqualified himself on account of the abolition of the managing committee of the Marketing Co-operative Society of which he is a member.

9. Therefore, in the circumstances, the action against the present petitioner on account of the abolishment of the managing committee of his Marketing Co-operative Society is ill-founded and illegal. Therefore, the respondent No.1 and 2 were not justified in holding that the present petitioner has cease to hold an office on account of the abolition of the managing

committee of his co-operative marketing society.

10. As regards the grounds mentioned in the show cause notice of 23-11-95, it must be stated at the outset that when the respondent No.2 had negatived the ground in his order and judgment, the respondent No.1 was not at all justified in reversing the said ground in his revision order. Before taking such a step he ought to have atleast given an opportunity to the petitioner by asking him to show cause as to why the said decision of respondent No.2 should not be reversed by the Revisional Court. It must be remembered that the revision in question is revision preferred by the present petitioner and it was not a sue motu revision, action taken by the respondent No.1. It seems that the respondent No.1 wanted to reverse the finding as regards the grounds mentioned in the show cause notice of 23-11-95 by exercising sue motu powers. But in that case, he ought to have served a show cause notice on the petitioner before taking any action in that respect. Therefore, on this ground alone the finding recorded by respondent No.1 will have to be quashed and set aside.

11. Now apart from the above technical aspect, it must be mentioned that admittedly the Mehsana Taluka Co-operative Purchase and Sale Union- marketing co-operative society of the present petitioner was holding a licence for the year 1994-95. The marketing year runs between 1st October till 30th September. The respondent No.2 had called for the record and proceeding of the Agricultural Produce Market Committee and on perusing the said record and proceeding, he had found that as a matter of fact, the said marketing co-operative society of the present petitioner had preferred an application for renewal of licence on 2nd October, 1995. No doubt, the decision on the said application is taken on 30th November, 1995. But record also shows that on that day not only the application of the marketing co-operative society of the present petitioner was allowed and sanctioned, but all other applications which were preferred prior to the date of the application of the petitioner's marketing co-operative society as well as after the date of the said application were approved and sanctioned on 30-11-95. That indicates that the market committee had not met prior to 30-11-95. It is an admitted fact that in the meeting of 30-11-95, the licence of the present petitioner's Mehsana Taluka Kharid Vechan Sangh Ltd. has been renewed. Once the said licence is renewed, it would relate back to the date of the market year. Therefore, it will have to be held that the Co-operative Marketing Society of the present

petitioner namely respondent No.3 was holding a licence and the said committee had not cease to be the member of the Apex Body. Therefore, in view of these circumstances, the respondent No.2 had rightly and correctly held that the action against the present petitioner for alleged non-holding of the licence by his Co-operative Marketing Society was not justified and ought to have been dropped. The reasons recorded by the respondent No.1 without giving any opportunity to the petitioner to explain the averments observed by him could not be accepted. Therefore, in the circumstances, the respondent No.1 was not justified in reversing the finding recorded by the respondent No.2, after verifying the record and appreciating the material on record. It could not be said that the finding recorded by the respondent No.2 on that count was either perverse or illegal so as to interfere with the same by exercising the revisional jurisdiction.

12. Therefore, in view of the above discussion it is quite obvious that the order passed by the respondent No.1 against the petitioner could not be sustained on any ground and that the orders passed by both the respondent No.1 and 2 ordering that the petitioner has cease to hold the office must be quashed and set aside. In view of the above discussions and finding, it is not necessary to go into the question of malafide alleged by the petitioner in his petition.

13. The learned Additional Government Pleader Shri A.J. Desai urged before me that as this Court has held that the petitioner was not served with show cause notice based on the second ground the authorities will be at liberty to serve such a notice and to take the necessary action and that position be cleared by me. But the said submission could not be accepted. I have considered the claim of respondent No. 1 and 2 to disqualify the petitioner under the provisions of Section 14 (1) (iii) and I have recorded a finding on merits that no such action is tenable in law in view of the circumstances of the case. I have recorded a clear finding that no such action is tenable in law. Therefore, in that background the prayer made by Shri A.J. Desai could not be accepted and I, therefore, reject the same.

14. Thus, I hold that the present petition will have to be allowed. I, therefore, hereby quash and set aside the finding recorded by both the respondent No.1 and 2 in their orders dated 29-2-95 and 25-1-96 respectively by which they had hold that the petitioner has cease to be the member of the Agricultural Produce Market Committee of Mehsana. Thus, I made the rule absolute accordingly.



In the circumstances, I direct the parties to bear their respective costs.

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